[Release No. 34–35309; File No. SR–NYSE–95–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval To Proposed Rule Change by New York Stock Exchange, Inc. Relating to an Extension of its Pilot Program for Stopping Stock Under Amendments to Rule 116.30

January 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 7s(b)(1), notice is hereby given that on January 18, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a request to extend amendments to Rule 116.30, with respect to the ability of specialists to stop stock in minimum variation markets, for four months until July 21, 1995.[1] The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of amendments to Exchange Rule 116.30, which permit a specialist to grant a stop in a minimum variation market. The practice of ''stopping'' stock by specialists on the Exchange refers to a guarantee by the specialist that an order the specialist receives will be executed at no worse a price than the contra-side price in the market when the specialist receives the order, with the understanding that the order may in fact receive a better price.

Formerly, Exchange Rule 116.30 permitted a specialist to stop stock only when the quotation spread was at least twice the minimum variation (*i.e.*, for most stock, at least a ¼ point), with the specialist then being required to narrow the quotation spread by making a bid or offer, as appropriate, on behalf of the order that is being stopped.

For three years, on March 21, 1991, March 16, 1992, and March 22, 1993, the Commission approved, on a one-year pilot basis each time, amendments to the rule which permit a specialist to stop stock in a minimum variation market (generally referred to as an ''⅛th point market'').[2] The Exchange sought these amendments on the grounds that many orders would receive an improved price if stopping stock in ⅛th point markets were permitted. The amendments to Rule 116.30 permit a specialist, upon request, to stop individual orders of 2,000 shares or less, up to an aggregate of 5,000 shares when multiple orders are stopped in an ⅛th point market. A specialist may stop an order pursuant to a specified larger order size threshold, or a specified larger aggregate share threshold, after obtaining Floor Official approval.

On February 12, 1992, the Exchange requested that the Commission grant permanent approval to the amendments to Rule 116.30.[3] At that time, the Commission staff requested that the Exchange extend the pilot for an additional year to allow the Commission more time to consider the Exchange's request to make the amendments to Rule 116.30 permanent. At the request of Commission staff, the Exchange again filed for an extension of the rule's provisions, this time until March 21, 1995.[4] In its approval order, the Commission asked the Exchange to submit a fourth monitoring report on the stopping stock pilot and to submit a proposed rule change regarding Rule 116.30 by December 31, 1984. The monitoring report has been submitted to the Commission under separate cover. The Commission has asked the Exchange to file for a four month extension of the amendments to Rule 116.30 so that the Commission may evaluate the fourth monitoring report prior to determining if it will grant permanent approval to the amendments. The Exchange believes that the results obtained by its monitoring effort during the pilot period show that the amendments to Rule 116.30 enable specialists to better serve investors through the ability to offer price improvement to stopped orders, while having relatively little adverse impact on other orders on the book.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. The amendments to Rule 116.30 are consistent with these objectives in that they permit the Exchange to better serve its customers by enabling specialists to execute customer orders at improved prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

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[1] The NYSE received approval to amend Rule 116.30, on a pilot basis, in Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991) (File No. SR–NYSE–90–48) (''1991 Approval Order''). The Commission subsequently extended the NYSE's pilot program in Securities Exchange Act Release Nos. 30482 (March 16, 1992), 57 FR 10198 (March 24, 1992) (File No. SR–NYSE–92–02) (''1992 Approval Order''); 32031 (March 22, 1993), 58 FR 16563 (March 29, 1993) (File No. SR–NYSE–93–18) (''1993 Approval Order''); and 33792 (March 21, 1994), 59 FR 14437 (March 28, 1994) (File No. SR–NYSE–94–06) (''1994 Approval Order''). Commission approval of these amendments to Rule 116.30 expires on March 21, 1995. The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption. *See* letter from James E. Buck, Senior Vice President and Corporate Secretary, NYSE, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated January 31, 1995.

[2] *See* 1991, 1992 and 1993 Approval Orders, *supra*, note 1.

[3] *See* File No. SR–NYSE–93–11.

[4] *See* 1994 Approval Order, *supra*, note 1.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–02 and should be submitted by February 28, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) [5] and Section 11(b) [6] of the Act. The Commission believes that the amendments to Rule 116.30 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.[7]

In its orders approving the pilot procedures,[8] the Commission asked the NYSE to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the percentage of stopped orders executed at the stop price, versus the percentage of such orders that received a better price; (2) market depth, including a comparison of the size of stopped orders to the size of the opposite side of the quote and to any quote size imbalance, and an analysis of the ratio of the size of the bid to the size of the offer; (3) whether limit orders on the specialist's book were bypassed due to the execution of stopped orders at a better price (and, to this end, the Commission requested that the NYSE conduct a one-day review of all book orders in three of the ten stocks receiving the greatest number of stops); and (4) specialist compliance with the pilot program's procedures.

The Exchange has submitted to the Commission four monitoring reports regarding the amendments to Rule 116.30. The Commission believes that, although these monitoring reports provide certain useful information concerning the operation of the pilot program, the Commission must conduct further analysis of the NYSE data and, in particular, of Rule 116.30's impact on limit orders on the specialist's book before it can consider permanent approval thereof. To allow the Commission fairly and comprehensively to evaluate the NYSE's use of its pilot procedures, without compromising the benefit that investors might receive under Rule 116.30, as amended, the Commission believes that it is reasonable to extend the pilot program until July 21, 1995.

First, the NYSE's latest monitoring report indicates that approximately half of eligible orders (*i.e.*, orders for 200 shares of less) stopped in minimum variation markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to certain investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. According to the NYSE report, moreover, virtually all stopped orders were for 2,000 shares of less. In this respect, the amendments to Rule 116.30 should mainly affect small public customer orders, which the Commission envisioned could most benefit from professional handling by the specialist.

Second, in terms of market depth, the NYSE's monitoring report suggests that stock tends to be stopped in minimum variation markets where there is a significant disparity (in both absolute and relative terms) between the number of shares bid for and the number offered.[9] That report also suggests that, given the depth of the opposite side of the market, orders affected by the Rule 116.30 pilot tend to be relatively small.[10] For a substantial majority of stops granted, the size of the stopped order was less than, or equal to, 25% of the size of the opposite side quote.

In the Commission's opinion, the NYSE data generally supports its conclusion that the imbalances on the opposite side of the market from the stopped orders were of sufficient size to suggest the likelihood of price improvement to customers.[11] The Commission continues to believe that the requirement of a sufficient market imbalance is a critical aspect of the pilot program.[12] When properly applied, such a requirement should help the NYSE ensure that stops are only granted in a minimum variation market when the benefit (*i.e.*, price improvement) to orders being stopped far exceeds the potential for harm to orders on the specialist's book.[13]

Third, the NYSE states that the amendments to Rule 116.30 have relatively little adverse impact on other orders on the specialist's book.[14] This

[5] 15 U.S.C. 78f (1988).

[6] 15 U.S.C. 78k (1988).

[7] For a description of NYSE procedures for stopping stock in minimum variation markets, and of the Commission's rationale for approving those procedures on a pilot basis, *see* 1991 Approval Order, *supra*, note 1. The discussion in the aforementioned order is incorporated by reference into this order.

[8] *See supra*, note 1.

[9] As part of its initial proposed rule change, the NYSE provided the following example illustrating the relationship between quote size imbalance and the likelihood of price improvement: Assume that the market for a given stock is quoted 30 to 30⅛, with 1,000 shares bid for and 20,000 shares offered. The large imbalance on the offer side of the market suggests that subsequent transactions will be on the bid side. Accordingly, the NYSE states that it might be appropriate to stop a market order to buy, since the delay might allow the specialist to execute the buyer's order at a lower price. After granting such a stop, the specialist would be required to increase his quote by the size of the stopped buy order, thereby adding depth to the bid side of the market.

[10] A relatively large order might begin to counteract the pressure the imbalance on the opposite side of the market is putting on the stock's price. Accordingly, it might not be as appropriate to stop such an order.

[11] The NYSE has stated, both to the Commission and to its members, the specialists should only stop stock in a minimum variation market when an imbalance exists on the opposite side of the market and such imbalance is of sufficient size to suggest the likelihood of price improvement. *See, e.g.*, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 27, 1990; NYSE information memo #1809, dated September 12, 1991.

[12] For a discussion of the relationship between quote size imbalance and the likelihood of price improvement, *see supra*, note 9.

In extending a comparable pilot program by the American stock Exchange, the Commission placed similar emphasis on the critical nature of the sufficient size standard when stopping stock in minimum variation markets. *See* Securities Exchange Act Release No. 33791 (March 21, 1994), 59 FR 14432 (March 28, 1994) (File No. SR–Amex–93–47).

[13] *See infra*, text accompanying notes 14–15.

[14] When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

As for book orders on the same side of the market as the stopped stock, the Commission believes that Rule 116.30's requirements make it unlikely that these limit orders would not be executed. Under the NYSE pilot program, an order can be stopped only conclusion is based, in large part, on the Exchange's one-day review of limit orders against which orders were stopped pursuant to this pilot program. As part of this review, which focused on three of the ten stocks receiving the greatest number of stops, the NYSE determined how often such book orders were executed at their limit price by the close of the day's trading. In addition to aggregated data, the Exchange provided a detailed breakdown of the disposition of each order.

The Commission has historically been concerned that book orders get bypassed when stock is stopped, especially in a minimum variation market.[15] Based on the NYSE's prior experience, the Commission did not have sufficient grounds to conclude that this long-standing concern had been alleviated. The Commission acknowledges, however, that the fourth monitoring report proves new information on this aspect of the pilot program. As a result, the Commission finds that additional time is necessary for the Commission to review such information and to ensure that Rule 116.30, as amended, does not harm public customers with limit orders on the specialist's book.

Finally, the NYSE report describes its compliance efforts (*e.g.*, automated surveillance, review of Floor Official records, information memos, continuing education). The Commission believes that these programs provide specialists with adequate notice of their responsibilities. Similarly, the Exchange has sufficient means to determine whether a specialist complied with the amendments' order size and aggregate share thresholds and, if not, whether Floor Official approval was obtained for larger parameters. The Commission would expect the NYSE to take appropriate action in response to any instance of specialist non-compliance with the pilot procedures. In considering permanent approval of the amendments to Rule 116.30, the Commission would place great, weight on the Exchange's record in compliance matters.

During the pilot extension, the Commission requests that the Exchange continue to monitor the effects of stopping stock in a minimum variation market and to provide additional information where appropriate. Moreover, if the Exchange determines to request permanent approval of the pilot program or an extension thereof beyond July 21, 1995, the NYSE should submit to the Commission a proposed rule change by April 1, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–95–02) is approved for a four month period ending on July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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if a substantial imbalance exists on the opposite side of the market. *See supra*, notes 9–13 and accompanying text. In those circumstances, the stock would probably trade away from the large imbalance, resulting in execution of orders on the book.

[15] *See, e.g.*, SEC. Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

[16] No comments were received in connection with the proposed rule change which implemented these procedures. *See* 1991 Approval Order, *supra*, note 1.

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–35313; File No. SR–PCC–94–01]

Self-Regulatory Organizations; Pacific Clearing Corporation; Notice of Filing of a Proposed Rule Change Amending Certain Provisions of the PCC's Rules, Participant Agreement, and Clearing Fund Agreement

February 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 28, 1994, the Pacific Clearing Corporation (''PCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by PCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCC proposes to correct certain typographical errors in its rules and to clarify certain provisions regarding post capital in its standard participant agreement and clearing fund agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of PCC's proposed rule change is to correct typographical errors to certain provisions of PCC's rules and to clarify certain provisions of its standard participant agreement and clearing fund agreement relating to specialist post capital.

Specifically, PCC proposes to correct typographical errors to the Table of Contents; PCC Rule 1.2(f), defining the term ''long position''; PCC Rules 2.1(c) and 2.1(d), addressing membership qualifications and approval; and PCC Rule 9.3(c)(iii) addressing specialist post termination procedures. In addition, PCC proposes to amend PCC Rule 5.2 to clarify that any reductions to excess post capital or a member's clearing fund deposit cannot be made for amounts that would reduce the member's post capital or clearing fund deposit below the minimum requirement.

With respect to the participant agreement, PCC proposes to amend certain paragraphs relating to post capital. Paragraph 3.1(e)(iii) will be amended to clarify that it refers to the monitoring of post capital rather than net capital as it currently states. Paragraph 4.5 of the participant agreement will be amended so that post capital is distinguished from net capital. Net capital, which is specified by PSE Rule 2.1 and Rule 15c3–1 of the Act, remains constant for a firm regardless of the number of specialist posts it operates. In contrast, post capital varies because it represents the amount of capital required to be maintained by a firm based on the number of specialists

[1] 15 U.S.C. 78s(b)(1) (1988).